

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

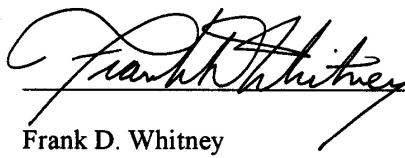
DOCKET NO. 3:06-cr-00391-FDW

UNITED STATES OF AMERICA)	
)	
vs.)	
)	
CORNELIUS TYRONE DUFF,)	NOTICE
)	
Defendant.)	
)	

THIS MATTER comes now before the Court upon Defendant's pro se "Motion to Compel . . ." (Doc. No. 166). In his Motion, Defendant seeks "to have his sentence further reduced based upon his continued substantial assistance, as the Government has failed in Bad Faith to file a Rule 35(b) Motion." (Doc. No. 166 at 4.) The time for Defendant to directly appeal his conviction has long since expired. For this reason, and because Defendant's Motion alleges prosecutorial misconduct, the Court hereby GIVES NOTICE under Castro v. United States, 540 U.S. 375 (2003), that it intends to recharacterize Defendant's Motion to Compel as a Motion to Vacate, Correct, or Set Aside Sentence pursuant to 28 U.S.C. § 2255. This recharacterization means that "any subsequent § 2255 motion will be subject to the restrictions on 'second or successive' motions." Castro, 540 U.S. at 383. If Defendant objects to this recharacterization, he has thirty (30) days, on or before August 11, 2008, "to withdraw the motion or amend it so that it contains *all* the § 2255 claims he believes he has." Id. at 383 (emphasis added); see also United States v. Blackstock, 513 F.3d 128 (4th Cir. 2008).

IT IS SO ORDERED.

Signed: July 9, 2008



Frank D. Whitney
United States District Judge
